

## DEPARTMENT OF STATE REVENUE

04-20140207.LOF

**Letter of Findings Number: 04-20140207**  
**Use Tax**  
**For Tax Years 2010-12**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

### ISSUES

#### **I. Use Tax–Window Stickers.**

**Authority:** IC § 6-2.5-1-1; IC § 6-2.5-1-11.5; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-4-1](#).

Taxpayer protests the Department's assessment of use tax on window stickers.

#### **II. Use Tax–Web Design and Web Hosting Services.**

**Authority:** IC § 6-2.5-3-2; IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of use tax on web design and web hosting services.

#### **III. Use Tax–Computer and Data Services.**

**Authority:** IC § 6-2.5-1-14; IC § 6-2.5-3-2; IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of use tax on computer and data services.

### STATEMENT OF FACTS

Taxpayer is an automobile dealership doing business in Indiana. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the tax years 2010-12. The audit resulted in the assessment of additional sales and use tax for the years at issue. Taxpayer protested the imposition of use tax on certain items. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

#### **I. Use Tax–Window Stickers.**

### DISCUSSION

Taxpayer protests the imposition of use tax on window stickers. When Taxpayer wishes to sell a vehicle, Taxpayer contacts a third-party vendor. The vendor takes photographs of Taxpayer's inventory and publishes it on the internet. The vendor also produces a window sticker which Taxpayer places on the vehicles. The vendor charges Taxpayer one price for its services. The Department determined that these transactions were subject to sales and use taxes. Taxpayer protests that the transactions were exempt from taxation. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross

retail tax has been collected at the point of purchase.

Therefore, when tangible personal property ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes. A transaction subject to the state's sales tax necessarily involves the transfer of TPP. The state's use tax is triggered when a person exercises ownership over TPP.

Pertaining to retail transactions, [45 IAC 2.2-4-1](#) states:

- (a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".
- (b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:
  - (1) The price arrived at between purchaser and seller.
  - (2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.
  - (3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

Thus, under [45 IAC 2.2-4-1](#) the entirety of the purchase price that Taxpayer paid which includes the printing of the stickers and the charge for internet publication is subject to gross retail income tax.

Taxpayer refers to IC § 6-2.5-1-11.5, which provides that the term "bundled transaction" does not include a retail sale that includes both taxable and nontaxable products in which the sales price of the taxable products do not exceed ten percent of the total purchase price or the total sales price of the bundled product.

However, the evidence presented by Taxpayer demonstrates that Taxpayer's purchases of the window stickers represented unitary transactions and not bundled transactions. The purchases of the window stickers constituted the sale of TPP and services, not taxable and nontaxable products. This subjects the entire purchase amounts to sales or use tax. Unitary transactions are further defined by IC § 6-2.5-1-1 which states:

- (a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

The documentation provided shows that the transactions in question involved the sale of TPP as well as the provision of services. Therefore, since the window stickers were purchased as part of a unitary transaction the entirety of the purchase prices are subject to sales tax. In regards to the window stickers which include services as well as TPP, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessments wrong.

## **FINDING**

Taxpayer's protest to the imposition of use tax in regards to window stickers is denied.

## **II. Use Tax—Web Design and Web Hosting Services.**

### **DISCUSSION**

Taxpayer protests the imposition of use tax on web design and web hosting services. Taxpayer asserts that its purchase of web design and web hosting services is not subject to use tax. Taxpayer maintains that it has not purchased TPP but only services. During the hearing, Taxpayer submitted documentation from the vendor that demonstrates the nature of the transaction in question.

After review, Taxpayer's documentation demonstrated that the transaction was for services only and did not include the transfer of TPP. IC § 6-2.5-3-2 does not apply because no TPP was transferred. Accordingly, Taxpayer's protest to the imposition of use tax on web design and web hosting services is sustained. Taxpayer has met the burden imposed by IC §6-8.1-5-1(c).

## **FINDING**

Taxpayer's protest of the imposition of use tax on web design and web hosting services is sustained.

### **III. Use Tax—Computer and Data Services.**

## **DISCUSSION**

Taxpayer protests the imposition of use tax on computer and data services. Taxpayer asserts that its purchase of computer and data services is not subject to use tax. Taxpayer maintains that it has not purchased TPP but only services.

IC § 6-2.5-1-14 states:

"Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

During the hearing, Taxpayer submitted documentation from the vendor to describe the nature of the transaction.

After review, Taxpayer's documentation demonstrated that the services purchased do not meet the statutory description of computer software. Taxpayer's purchases were for subscription and management services. Accordingly, Taxpayer and vendor did not transfer TPP and IC § 6-2.5-3-2 does not apply. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c). Taxpayer's protest to the imposition of use tax on computer and data services is sustained.

## **FINDING**

Taxpayer's protest of the imposition of use tax on computer and data services is sustained.

## **SUMMARY**

Taxpayer's Issue I protest regarding the imposition of use tax on transactions of window stickers is denied. Taxpayer's Issue II protest regarding the imposition use tax on web design and web hosting services is sustained. Taxpayer's Issue III protest regarding the imposition of use tax on computer and data services is also sustained.

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